

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS C. WEDGEWORTH,

Defendant-Appellant.

UNPUBLISHED

April 28, 2009

No. 283619

Wayne Circuit Court

LC No. 06-008613-FC

Before: Borrello, P.J., and Murphy and M. J. Kelly, JJ.

PER CURIAM.

Defendant pleaded no contest to first-degree criminal sexual conduct (CSC), MCL 750.520b(1)(e), first-degree home invasion, MCL 750.110a(2), and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent prison terms of 18 to 40 years for the first-degree CSC conviction and 10 to 20 years for the home invasion conviction, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. The trial court denied defendant's postjudgment motion to withdraw his no contest plea. Defendant appeals by delayed leave granted. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

A no contest plea must be understanding, voluntary, and accurate. MCR 6.302(A). It is understanding if the defendant is advised of and understands the rights set forth in MCR 6.302(B). It is voluntary if the terms of any plea agreement are disclosed and the plea is the defendant's own choice, i.e., it is not tendered under threat or duress. MCR 6.302(C). It is accurate if a factual basis is established which supports a finding that the defendant is guilty of the offense(s) for which he or she is pleading guilty or no contest. MCR 6.302(D)(2). A motion to withdraw a guilty plea after sentencing is a matter within the trial court's discretion. *People v Davidovich*, 238 Mich App 422, 425; 606 NW2d 387 (1999), aff'd 463 Mich 446 (2000). Such a motion "must be made based on a showing of miscarriage of justice." *People v Ward*, 459 Mich 602, 614; 594 NW2d 47 (1999). This Court "will not disturb the trial court's decision unless the court clearly abused its discretion, resulting in a miscarriage of justice." *Davidovich*, *supra* at 425.

Where a plea agreement includes a specific sentence, the trial court may reject the agreement, accept the agreement, or take the agreement under advisement. MCR 6.302(C)(3). If the court accepts the agreement without having considered the presentence report or takes the agreement under advisement, the defendant is entitled to withdraw his plea if the court ultimately

decides that the sentence is inappropriate. *Id.*; *People v Killebrew*, 416 Mich 189, 206-207; 330 NW2d 834 (1982). The court rule permits the court to reject the entire plea agreement where it includes a specific sentence agreement or recommendation. *People v Grove*, 455 Mich 439, 455-456; 566 NW2d 547 (1997).

In this case, on the day set for trial, the parties reached a plea agreement. The agreement required defendant to plead no contest to three of nine charges in exchange for dismissal of the remaining charges and an habitual offender notice. The parties also agreed to a minimum sentence at the low end of the sentencing guidelines range, which the parties had calculated to be 108 to 180 months. However, the trial court refused to accept the sentence component of the agreement. Rather than reject the plea outright, it proceeded to take a plea as if the agreement did not include a specific sentence. That was improper. A court does not have the “option of accepting a plea involving a sentence agreement and imposing a different sentence subject to the defendant’s affirmance of the plea[.]” *People v Siebert*, 201 Mich App 402, 411; 507 NW2d 211 (1993), *aff’d* 450 Mich 500 (1995). That is to say, “the trial court’s exclusive authority to impose sentence does not allow it to enforce only parts of a bargain.” *People v Siebert*, 450 Mich 500, 510-511; 537 NW2d 891 (1995). Thus, the trial court here should have rejected the plea agreement outright or accepted it on a provisional basis, affording defendant an opportunity to withdraw his plea if it elected not to impose a sentence within the recommended range.

However, defendant was advised at the outset, before tendering his plea, that the court would not adhere to the sentence agreement. He elected to tender a plea anyway. Further, before accepting the plea, the court afforded defendant the unconditional opportunity to withdraw his plea. See MCR 6.310(A). After conferring with counsel, defendant elected not to withdraw his plea. While defendant contends that he did not have sufficient time to discuss the withdrawal with counsel, that does not affect the validity of the plea itself. Therefore, the trial court’s denial of defendant’s motion was not an abuse of discretion that resulted in a miscarriage of justice.

Affirmed.

/s/ Stephen L. Borrello
/s/ William B. Murphy
/s/ Michael J. Kelly